[redacted]

March 10, 2006

Assistant Director of Records
Office of Foreign Asset Control
U.S. Department of the Treasury
1500 Pennsylvania Ave
Washington D.C. 20220

Submitted VIA: *regulations.gov*
Attention: Request for Comments (Enforcement Procedures)

Dear Sir:

The Florida FCUL League (FCUL), representing almost 200 of Florida's credit unions, appreciates the opportunity to offer our comments on the OFAC's Interim Final Rule and Request for Comments on Economic Sanctions Enforcement Procedures for Banking Institutions as published in the Federal Register, Vol. 71, Number 8 on Monday, January 12, 2006.

The Florida Credit Union League offers compliance assistance to our member credit unions and provides a 24-hour online assistance on our web site. The Florida Credit Union League (FCUL) Compliance Department surveyed our affiliated credit unions on this matter in order to gain the input of the end user's of this form and have integrated their concerns with our comments.

The Florida Credit Union League supports OFAC's decision to publish a procedural framework for economic sanctions enforcement programs that may be used with respect to banking institutions. This action will assist credit unions as well as other financial institutions to better understand OFAC's authority and enforcement procedures. We also support OFAC's withdrawal of its January 29, 2003 proposed rule (to the extent it applies to financial institutions.)

We are particularly pleased to note that OFAC's enforcement procedures adopt a risk based approach that takes in to consideration the uniqueness of each institution's OFAC compliance program and its size, business volume, member/customer base, and product lines. We believe

Assistant Director of Records
Office of Foreign Asset Control
March 7, 2006

this will ease some current concerns of small credit unions, with a limited and homogenous member base and standard generic product lines.

We do have a few limited comments on the Interim Rule and OFAC's enforcement procedures. These are:

- The Interim Final Rule's Matrix B contains additional factors to be considered other than those already covered in the appendixes to the FFIEC Bank Secrecy Act/Anti-Money Laundering Examination Manual. We believe that OFAC should coordinate with the FFIEC and have the FFIEC Bank Secrecy Act/Anti-Money Laundering Examination Manual amended to include these additional matrix factors;
- The Interim Final Rule discusses the OFAC procedure to consider an institution's record of voluntary disclosure of apparent violations. However, it does not expound or define apparent violations. There may be some confusion between OFAC's opinion of such apparent violations and the consideration of the financial institution. The rule should contain a explanation on this area, and
- The rule, also, does not establish a procedure or format for use by a financial institution to voluntarily report apparent violations.

Thank you for allowing us to share our comments. We appreciate Treasury and OFAC's decision to give financial institutions, associations and others an opportunity to participate in the regulatory process. We hope you find our comments and support useful in evaluating this Interim Final Rule.

Sincerely Yours,

G M. Hood

Guy M. Hood, President/CEO
Florida FCU League, Inc.

cc: Mary Dunn, Associate General Counsel CUNA

NAVY FEDERAL CREDIT UNION

Office of the President

PO Box 3000 • Merrifield VA • 22119-3000

February 28, 2006

Assistant Director of Records
ATTN: Request for Comments (Enforcement Procedures)
Office of Foreign Assets Control
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Economic Sanctions Enforcement Procedures for Banking Institutions

Dear Sir or Madam:

Navy Federal Credit Union provides the following comments on the Office of Foreign Assets Control's (OFAC) request for comments on its interim final rule on Economic Sanctions Enforcement Procedures for Banking Institutions. Navy Federal is the world's largest natural person credit union with $25 billion in assets and 2.6 million members.

Navy Federal generally supports the interim final rule. We commend OFAC for evaluating apparent violations in the context of the institution's overall OFAC compliance program and specific OFAC compliance record instead of issuing enforcement actions based on a single apparent violation. We appreciate OFAC's recognition that each banking institution's situation is different and that each compliance program should be tailored to the banking institution's unique circumstances. It has become apparent that a "one size fits all" approach to OFAC compliance doesn't work and the same should hold true for enforcement procedures. Navy Federal agrees that an overview of an institution's overall OFAC compliance program and pattern of OFAC compliance should be a major factor in determining appropriate administrative actions.

Navy Federal disagrees with the proposed definition of voluntary disclosure by an institution. We believe that any disclosure an institution reports should be considered voluntary, regardless of whether or not OFAC previously received information on the same conduct from another source. We believe it is out of an institution's control whether another source reports the same information first. We feel that since the information was provided voluntarily, OFAC should consider it as such. Also, to encourage voluntary reporting, Navy Federal recommends that OFAC not impose a penalty for voluntarily reporting first offenses and at least a 50 percent reduction for voluntarily reporting subsequent violations. We believe that low penalties for voluntary reporting will increase the overall availability and timeliness of useful information and, consequently, further the goals of OFAC.

Navy Federal realizes that the Federal Financial Institutions Examination Council's Bank Secrecy Act/Anti-Money Laundering Examination Manual (FFIEC BSA/AML Manual) calls for a risk assessment in developing an OFAC compliance program and we appreciate OFAC trying to be consistent with the manual in its interim final rule. However, Navy Federal is concerned with the practicality of applying a risk assessment to such a clearly defined regulatory issue. Under OFAC regulations, financial institutions are required to block property and payment of any funds transfers or transactions involving any country, property, or individual appearing on OFAC's "Specially Designated Nationals and Blocked Persons" list (SND list). Failure to do so is a violation under OFAC and subject to potentially substantial fines. Any policies, procedures, or processes developed based on a risk assessment do not change this fact. These prohibited transactions need to be identified and blocked regardless of the risk level identified by an assessment. We request OFAC strongly consider the practicality of requiring a risk assessment on such a clear-cut regulation.

We appreciate the opportunity to provide these comments on OFAC's Economic Sanctions Enforcement Procedures for Banking Institutions.

Sincerely,

Cutler Dawson
President/CEO

CD/tg

WESTERN UNION
A First Data Company

Western Union Financial Services, Inc.
12510 East Belford Avenue
M21A5
Englewood, CO 80112

March 10, 2006

Assistant Director of Records
ATTN: Request for Comments (Enforcement Procedures)
Office of Foreign Assets Control
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Re: Economic Sanctions Enforcement Procedures for Banking Institutions
Interim Final Rule with Request for Comments
FR Doc. 06-278

Dear Sir or Madam:

Western Union Financial Services, Inc. ("Western Union") appreciates the opportunity to comment on the above-referenced Interim Final Rule with Request for Comments. Western Union provides financial services to both retail and commercial clients in the United States and in over 195 countries. Through our services, consumers and businesses can securely transfer funds or make payments through electronic channels or using money orders. Western Union is a subsidiary of First Data Corporation which employs over 30,000 people worldwide and is a leader in the payment services industry.

The Interim Final Rule sets out OFAC's modified enforcement procedures and guidelines for certain banking institutions.[1] The procedures supercede OFAC's prior 2003 guidance which, with respect to such institutions, has been withdrawn. OFAC has indicated that it intends to publish similar guidance for certain non-bank financial institutions, including money services businesses,[2] in the future. In this regard, OFAC has asked for comments as to how the procedures for banking institutions might be modified when applied to these other types of financial institutions.

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[1] The procedures apply only to depository institutions subject to regulation or supervision by any of the federal regulatory agencies that comprise the Federal Financial Institutions Examination Council.

[2] Western Union is a money services business as defined by the Bank Secrecy Act and the regulations promulgated thereunder.

Western Union believes the procedures in the Interim Final Rule represent a significant step forward in OFAC's approach towards enforcement of the sanctions programs it administers. They reflect OFAC's commitment to providing greater transparency to its decision-making processes and to working with the financial services industry and other regulatory agencies to create an OFAC compliance regime that is effective, workable and fair. We are particularly pleased by OFAC's willingness to take into consideration in the enforcement process the existence and quality of a financial institution's risk-based OFAC compliance program. Although we think that even greater weight should be accorded to this factor when making enforcement decisions, perhaps to the point of providing a safe harbor against liability, the recognition given to it in the current procedures is encouraging.

We do not believe the enforcement procedures and guidelines themselves require significant modification in order to be applied to non-bank financial institutions. The general concepts and approaches embodied in these procedures are as appropriate for non-bank financial institutions as they are for banks. These include making enforcement decisions in the context of periodic reviews of the financial institution, looking at the institution's overall OFAC compliance record during the relevant review period rather than reviewing each apparent violation independently and in isolation, and taking into account the adoption by the financial institution of a reasonable risk-based OFAC compliance program. This last concept is of particular importance. All financial institutions, not just banks, should be assured that their implementation of a risk-based OFAC compliance program will constitute a significant mitigating factor in OFAC's decision whether to pursue enforcement action against them should violations occur.

Where differences lie, and where modifications are necessary, are in what constitutes a reasonable risk-based OFAC compliance program for other types of financial institutions. For example, Annex B to the Interim Final Rule sets forth the elements OFAC expects to see in a bank's OFAC compliance program, while Annex A sets out risk matrices to assist banks in evaluating their compliance programs. While the general program elements set forth in Annex B[3] should be appropriate for other financial institutions, the more detailed descriptions of these elements will need to be modified to reflect how the other financial institutions are structured or organized, the types of products and services they offer, the nature of their relationships with their customers or those who use their services, and other similar factors.

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[3] These include identification of high risk business areas; policies and procedures for reviewing transactions, updating the program, reporting, etc.; testing; training; and appointing an OFAC compliance officer.

The matrices in Annex A, on the other hand, are not appropriate for non-bank financial institutions since the risk factors contained in them are completely bank-centric. In fact, we are not certain that risk matrices of this nature are necessarily appropriate for all types of financial institutions. Although guidance from OFAC as to what it considers higher risk activities is certainly helpful, financial institutions should be given a fair amount of flexibility in identifying risks associated with their businesses and designing compliance programs to address them. We are concerned that formulaic risk matrices, as opposed to more general guidance, could take away some of this flexibility and tip the balance towards a more prescriptive compliance regime.

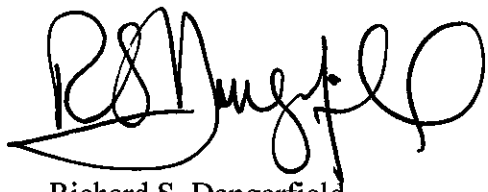
The following are examples of the types of issues we believe need to be taken into consideration by OFAC in developing appropriate standards and guidance in this area. One difference between a financial institution such as Western Union and a bank is that we do not open accounts for or establish formal continuing relationships with the consumers who use our products or services. As a result, we typically do not collect as much information about the consumer as a bank might for its accountholders. This leads to a large number of potential hits when we screen transactions against the OFAC SDN list. Resolving these potential hits involves a huge commitment of time and resources, and the overwhelming majority of them turn out to be false positives. We believe this issue needs to be considered in determining what constitutes appropriate risk-based monitoring and screening procedures for money services businesses. Another difference is that a large number of our transactions involve low dollar amounts. Thus, if we inadvertently fail to detect or block a prohibited transaction, it will normally involve a very small amount of funds. We believe this fact should be a legitimate factor in assessing risk and that the amount of funds involved in a violation should be considered a mitigating factor in OFAC's enforcement decision-making process.

Finally, to the extent the enforcement procedures for banks rely on OFAC's ability to interact with the federal bank regulatory agencies, some modification would be necessary since other types of financial institutions may not be functionally regulated on the federal level. With respect to money services businesses such as Western Union, we believe OFAC can work with both FinCEN, which oversees money services businesses' obligations under the Bank Secrecy Act, and the IRS, to which FinCEN has delegated authority to examine money services businesses' compliance with such obligations. In addition, because many money services businesses are licensed and examined at the state level, it may be appropriate for OFAC to obtain input from the states in developing guidelines for OFAC compliance programs. However, given that OFAC's mission is to control foreign assets in furtherance of U.S. foreign policy, OFAC compliance and enforcement are uniquely federal in nature and need to be developed and applied on a

uniform national basis. Thus, an important aspect of OFAC's interaction with the states would be to provide them with clear guidance as to what it expects from a compliance standpoint. This will enable the states to better fulfill their oversight and examination responsibilities and will ensure that money services businesses are subject to consistent standards nationwide.

Western Union would be happy to discuss these and other issues with OFAC and provide whatever assistance OFAC deems appropriate in connection with its development of guidance for non-bank financial institutions.

Very truly yours,



Richard S. Dangerfield
Senior Counsel

cc: Christine Carnavos, Senior Vice President
AML Global Compliance, Chief Compliance Officer and Counsel

Joseph Cachey III, Senior Vice President
AML Compliance, External Partnerships, Leadership and Strategies

VISA

March 13, 2006

Russell W. Schrader
Senior Vice President
Assistant General Counsel

By Facsimile

Department of the Treasury
Office of Foreign Assets Control
Assistant Director of Records
ATTN: Request for Comments
(Enforcement Procedures)
1500 Pennsylvania Ave., NW
Washington, D.C. 20220

Re: Economic Sanctions Enforcement Procedures for Banking Institutions
FR Doc. 06-278

Dear Sir or Madam:

This letter is submitted on behalf of Visa U.S.A. Inc. in response to the request for public comment ("Notice") by the Office of Foreign Assets Control ("OFAC"), published in the Federal Register on January 12, 2006.[1] The Notice seeks public comment on the interim final rule presenting OFAC's Economic Sanctions Enforcement Procedures for Banking Institutions ("Enforcement Procedures"). Visa supports OFAC's decision to provide banking institutions with advance notice of the Enforcement Procedures, and appreciates the opportunity to comment on this important matter.

The Visa Payment System, of which Visa U.S.A.[2] is a part, is the largest consumer payment system, and the leading consumer e-commerce payment system, in the world, with more volume than all other major payment cards combined. In calendar year 2005, Visa U.S.A. card purchases exceeded a trillion dollars, with over 510 million Visa cards in circulation. Visa plays a pivotal role in advancing new payment products and technologies, including technology initiatives for protecting personal information and preventing identity theft and other fraud, for the benefit of Visa's member financial institutions and their hundreds of millions of cardholders.

[1] Economic Sanctions Enforcement Procedures for Banking Institutions, 71 Fed. Reg. 1971 (Jan. 12, 2006) (to be codified at 31 C.F.R. pt. 501, app. A).
[2] Visa U.S.A. is a membership organization comprised of U.S. financial institutions licensed to use the Visa service marks in connection with payment systems.

Visa U.S.A. Inc.
P.O. Box 194607
San Francisco, CA 94119-4607
U.S.A.
t 415 932 2178
f 415 932 2525

BACKGROUND

OFAC is authorized to administer and enforce federal laws that impose sanctions against designated countries, groups, organizations and individuals that are declared to be hostile to the goals of U.S. foreign policy and national security ("Sanctions Rules"). The Enforcement Procedures, which apply specifically to "banking institutions," represent an important initiative to establish transparency for OFAC's protocol for reviewing a financial institution for compliance with the Sanctions Rules based on an analysis of the nature and size of the institution's business and the transactions in which the particular institution engages. In addition, the Enforcement Procedures recognize that each banking institution currently is subject to supervision and examination by a federal banking regulator ("Banking Regulator"), a member of the Federal Financial Institutions Examination Council ("FFIEC"), and, as a result, OFAC will receive information about an institution's compliance program from that institution's Banking Regulator.[3] In this regard, OFAC is soliciting comment on "how much significance, separately or collectively, OFAC should attribute in its enforcement decisions" to factors such as a Banking Regulator's assessments of a financial institution's compliance program, a financial institution's historical OFAC compliance record, and a comparison of that institution's compliance record to similarly situated banking institutions.[4]

In the Notice, OFAC stated that the Enforcement Procedures do not apply to entities regulated by the Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC"), including broker-dealers, mutual funds, investment advisers or to "financial sector entities" regulated by state government agencies.[5] In light of OFAC's stated plan to issue separate enforcement procedures for entities regulated by the SEC and CFTC and for certain other entities, OFAC has asked for comment on how the Enforcement Procedures should be modified for those entities.[6] Similarly, OFAC explained in the Notice that the Enforcement Procedures do not apply to a holding company and, because of the complexity that these structures pose for enforcement purposes, OFAC has sought comment on the appropriate enforcement approach for "complicated holding company structures."[7]

COMMENTS ON THE ENFORCEMENT PROCEDURES

Visa believes that OFAC has struck the appropriate balance establishing in the Enforcement Procedures the procedural mechanisms and standards that would govern how OFAC will review banking institutions for compliance with the Sanctions Rules and

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[3] The Enforcement Procedures define a "banking regulator" to mean the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, or the Office of Thrift Supervision. 71 Fed. Reg. at 1974 (to be codified at 31 C.F.R. pt. 501, app. A, ¶ I.A.).

[4] *Id.* at 1973.

[5] *Id.*

[6] *Id.*

[7] *Id.*

initiate administrative actions where it deems appropriate. Visa believes that the Enforcement Procedures are consistent with the risk-based programs that banking institutions have developed to comply with the Sanctions Rules. As OFAC has recognized,[8] each banking institution already is evaluated by its Banking Regulator based on an analysis of the institution's particular risk of encountering accounts or transactions that are subject to the Sanctions Rules. Visa believes that OFAC's policy for determining whether to initiate an administrative action against an institution based, in large part, on the quality and effectiveness of the institution's overall risk-based compliance program, "as determined by the institution's primary [Banking Regulator],"[9] generally is consistent with the risk-based standards that currently apply to banking institutions. In particular, OFAC has adopted an appropriate policy, as stated in the Notice, of reviewing "apparent violations by a particular institution over a period of time, rather than evaluating each apparent violation independently,"[10] which is consistent with the existing standards that require banking institutions to implement and maintain risk-based *programs* to comply with the Sanctions Rules. Nevertheless, Visa encourages OFAC to continue to work with federal and state regulators to develop coordinated investigation procedures and standards that will facilitate the efforts of financial institutions to improve their risk-based programs for complying with the Sanctions Rules.

Retain Procedures for Periodic Institutional Review

Visa supports OFAC's decision to implement specific procedures establishing a protocol for periodically reviewing banking institutions for compliance with the Sanctions Rules. In particular, Visa believes that the procedures that OFAC would use to conduct a preliminary assessment of a financial institution's compliance with the Sanctions Rules and to discuss the results of its review with the institution should be retained in the final Enforcement Procedures. However, Visa encourages OFAC to modify the procedures for allowing a financial institution to respond to provide that an institution would have 30 days to file a response with OFAC, unless unusual circumstances require a shorter period of time.

Extend the Enforcement Procedures to Subsidiaries of Banking Institutions, Holding Companies and Other Financial Institutions

Visa also believes it is important for OFAC to extend the application of the Enforcement Procedures to subsidiaries of banking institutions, holding companies and other financial institutions. Just as the Enforcement Procedures would facilitate compliance by "banking institutions," standardized procedures for reviewing compliance and initiating administrative actions would assist other types of financial institutions in a holding company structure to develop and maintain procedures to comply with the

[8] *Id.* at 1972.
[9] *Id.* at 1974 (to be codified at 31 C.F.R. pt. 501, app. A, ¶ IV.C).
[10] *Id.* at 1972.

Sanctions Rules. As OFAC has recognized,[11] the Banking Regulators have developed common standards for examining banking institutions subject to their jurisdiction for compliance with the Bank Secrecy Act and the Sanctions Rules. Specifically, the Banking Regulators have developed standards that expressly require a banking institution to establish a written OFAC compliance program commensurate with its risk profile as "a matter of sound banking practice and in order to ensure compliance [with the Sanctions]."[12] Visa believes that, as a practical matter, affiliates of depository institutions also comply with the Sanctions Rules by adhering to similar written programs that are tailored to the affiliate's particular business, customer base and risk profile.

As a result, Visa firmly believes that banking institutions and their subsidiaries and affiliates would be able to better coordinate and streamline their risk-based systems for compliance with the Sanctions Rules if the Enforcement Procedures applied to the entire holding company and to all types of financial institutions, and urges OFAC to extend the procedures accordingly. In addition, Visa believes that the risk matrices, which OFAC has developed to be "used by depository institutions as 'best practices'," could easily be adapted for use by other financial institutions as a "guide . . . for determining the quality of an institution's compliance program."[13]

Establish Effectiveness of Overall Compliance as the Principal Factor Affecting Administrative Action

In the Notice, OFAC prescribes 16 factors that could be considered in making a decision regarding administrative action, and suggests that additional, unspecified factors also could be taken into account in reaching that decision. Visa believes that OFAC should clarify the particular factors that will be taken into consideration in a decision regarding administrative action and list the specified factors in order of importance. In particular, Visa believes that OFAC should establish the "quality and effectiveness of the banking institution's overall OFAC compliance program, as determined by the institution's primary regulator,"[14] as the central factor for determining whether to bring an action against the institution. OFAC also should make it clear that its decision regarding an action will be based predominantly on this key factor, unless there is evidence of a "deliberate effort [by the institution] to hide or conceal from OFAC or to mislead OFAC concerning an apparent violation or violations of its OFAC compliance program."[15]

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[11] *Id.* at 1972.
[12] FFIEC Bank Secrecy Act Anti-Money Laundering Examination Manual, 87 (June 2005).
[13] 71 Fed. Reg. at 1972.
[14] *Id.* at 1974 (to be codified at 31 C.F.R. pt. 501, app. A, ¶ IV.C).
[15] *Id.* (to be codified at 31 C.F.R. pt. 501, app. A, ¶ IV.G).

We appreciate the opportunity to comment on this important matter. If you have any questions concerning these comments or if we may otherwise be of assistance in connection with this matter, please do not hesitate to contact me, at (415) 932-2178.

Sincerely,

Russell W. Schrader
Senior Vice President and
Assistant General Counsel

CARL B. WILKERSON
VICE PRESIDENT & CHIEF COUNSEL,
SECURITIES & LITIGATION

LISA TATE
SENIOR COUNSEL, LITIGATION

March 13, 2006

Assistant Director of Records
ATTN: Request for Comments (Enforcement Procedures)
Office of Foreign Assets Control
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

SUBJECT: Comments on an OFAC Request for Comments, "Economic Sanctions Enforcement for Banking Institutions," FR Doc. 06-278

Dear Sir/Madam:

On behalf of our member companies, the American Council of Life Insurers submits comments in response to a request for comments issued by the Office of Foreign Asset Control and published in the Federal Register on January 12, 2006. The request for comments was issued with an interim final rule on economic sanctions enforcement procedures for banking institutions and included a solicitation for suggestions on the application of enforcement procedures to other financial institutions, including life insurance, reinsurance companies, and complicated holding company structures. In particular, the notice requested comment on:

> how enforcement procedures should be modified to apply to these other financial sector entities and whether and how enforcement procedures for financial sector firms should vary depending on the regulatory regime, if any, to which various financial sector firms are subject.

ACLI represents three hundred seventy-seven (377) member companies operating in the United States. These 377 member companies account for 91 percent of total assets, 90 percent of the life insurance premiums, and 95 percent of annuity considerations in the United States.

101 Constitution Avenue, N.W.; Suite 700
Washington, D.C. 20001
lisatate@acli.com; (t) 202-624-2153; (f) 202-572-4832

ACLI recognizes that some modifications in the specifics of the enforcement guidelines will be appropriate for non-bank financial institutions. For instance, the OFAC Risk Matrices would have to be altered to make them responsive to risk factors in the insurance industry. (ACLI will comment in more detail when guidelines designed for its industry are issued.) At this stage, however, ACLI strongly recommends that OFAC adhere to its previously stated position, embodied in the bank guidelines, that OFAC enforcement should occur exclusively at the federal level, based on uniform national standards. As OFAC has recognized in its responses to "Frequently Asked Questions" (FAQs),[1] OFAC regulations are based on powers accorded the President under the Trading with the Enemy Act and the International Emergency Economic Powers Act. Accordingly, those regulations preempt state insurance regulations.

In order to assure that these national sanctions programs are administered consistently and in accordance with their purpose, they should be enforced exclusively by federal regulatory authorities. As noted in OFAC's list of "Frequently Asked Questions, OFAC regulations are not insurance regulations, and they may conflict with state laws that would otherwise govern an insurer's ability to withhold claim payments, cancel policies, or decline to enter into policies. Absent uniform OFAC examination and enforcement by federal authorities, inconsistent patterns of compliance could develop among the many jurisdictions that currently regulate life insurers, reinsurers, and their products. Frequently, OFAC sanctions programs reflect nuanced choices to impose selective sanctions. Inconsistency in enforcement would only undercut the effectiveness of the Executive Branch's ability to direct the Nation's foreign policy.[2]

ACLI believes that only federal examination and enforcement of OFAC regulations will satisfy the clear intent of the Congress to impose consistent economic sanctions among all the states on countries and individuals, such as terrorists and narcotics traffickers. In a directly parallel context, the Treasury Department adopted a federal examination and enforcement regime in the final anti-money laundering regulations for the life insurance industry. The same approach would ensure the consistent imposition of OFAC economic sanctions throughout the nation and would not result in inconsistent or redundant examinations among the states.

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1 http://www.treas.gov/offices/enforcement/ofac/faq/index.shtml

2 The US Supreme Court has twice acted to strike down state laws interfering with the federal government's authority in the area of foreign policy. Crosby v. National Foreign Trade Council, 530 U.S. 363 (2000) (Mass. Burma Law); American Insurance Ass'n v. Garamendi, 539 U.S. 396 (2003) (Cal. Law requiring disclosure of information on "Holocaust insurance policies").

We appreciate the opportunity to comment in this matter and would welcome a meeting to discuss it with you further. We would also be eager to comment on any proposed regulations, as they pertain to the insurance industry, that may be issued in the future. In the meantime, please feel free to contact us if you have any questions or need additional information.

Sincerely,

Carl B. Wilkerson

Lisa Tate

Carl B. Wilkerson

Lisa Tate

PCI
Property Casualty Insurers Association of America
Shaping the Future of American Insurance

2600 South River Road, Des Plaines, IL 60018-3286
Telephone: 847-297-7800 | Facsimile: 847-759-4336
www.pciaa.net

KATHLEEN N. JENSEN
SENIOR COUNSEL AND DIRECTOR

March 13, 2006

Assistant Director of Record
ATTN: Request for Comments
(Enforcement Procedures)
Office of Foreign Assets Control
Department of the Treasury
1500 Pennsylvania Avenue, NW.
Washington, DC 20220

Sent via e-mail to
www.treas.gov/offices/enforcement/ofac/comment

Re: Office of Foreign Assets Control FR Doc. 06-278

PCI Comments to
Interim Final Rule on the
Economic Sanctions Enforcement Procedures for Banking Institutions

The Property Casualty Insurers Association of America (PCI) is a leading property-casualty insurance trade association with more than 1000 members that write 184 billion dollars of premium annually. Its members write more than 40 percent of the property/casualty insurance nationwide. We appreciate this opportunity to comment on the Proposed Interim Final Rule on the Economic Sanctions Enforcement Procedures for Banking Institutions (Bank Enforcement Guidelines) and to provide suggestions concerning how the enforcement procedures in the interim final rule should be modified for the purpose of providing separate enforcement procedures for the property casualty insurance industry.

A large portion of the Bank Enforcement Guidelines relies on the oversight of the Federal Financial Institutions Examination Council, the regulators of the banks. This might make sense from a banking perspective, but it would not make sense from an insurance perspective to have the various state insurance commissioners responsible for oversight and verifying OFAC compliance. OFAC compliance is not particular to the business of insurance. The purpose of OFAC compliance is to assure that ANY and EVERY commercial entity does not do business or enable an individual who, or a country that is on the SDN list. OFAC compliance is not any different for a company who sells insurance, from a company who sells widgets. Neither company may sell their product to an individual who, or in a country that is on the SDN list. OFAC compliance does not stipulate a certain way to rate an insurance policy for an individual on the SDN list, or require a company insure a certain percentage of individuals on the SDN list in their state. State insurance regulators are extremely

knowledgeable about the specific insurance needs in their state and not generally knowledgeable about OFAC or any other federal rule or regulation. An entity that does not know or understand a regulation should not have oversight of that regulation.

In 1945 Congress enacted Public Law 15 (the McCarran-Ferguson Act) which placed insurance regulatory authority in the states. By enacting this law Congress recognized that there are special insurance issues in each state. They recognized that each state has separate concerns about the insurance needs of the citizens in their respective states. Those states that experience different weather related claims need to have specific insurance regulations that address those different needs, and those states that have different economic variances, have specific insurance regulations to address those different needs. Each state's insurance regulator understands the special insurance needs in their state and promulgates regulations to address those needs. Additionally, those states then also assure compliance with their own respective *insurance regulations*. The Federal Internal Revenue service does not place the compliance with the Federal Tax Code with the state insurance regulators, because the state insurance regulators are not qualified to interpret and assure compliance with the federal law. Likewise, the State insurance regulators generally aren't qualified to interpret and assure compliance with OFAC.

OFAC compliance needs to stay at the federal level. OFAC needs to be interpreted consistently across all 50 states. One state insurance regulator can not be allowed to put in place one interpretation of satisfactory compliance, while another state insurance regulator will put in place a different interpretation of satisfactory compliance. OFAC is a federal law and therefore should be interpreted and complied with the same in every state. With regard to OFAC compliance, insurance companies should be treated the same as any other industry that does not have a federal regulator with compliance oversight, such as the widget manufacturer. If OFAC promulgates guidelines for the insurance industry, the compliance oversight belongs with a federal regulator.

The Banking Enforcement Guidelines allows for voluntary disclosure. The definition of 'voluntary disclosure' indicates that a voluntary disclosure does not qualify for a reduced sanction if "*another person's blocking or funds transfer rejection report is required to be filed, whether or not this required filing is made.*" In the property/casualty insurance industry it would be VERY rare, if ever, that another person's blocking or funds transfer rejection report should not already have identified the individual on the SDN list. By excluding this scenario from a reduced sanction there would be no incentive to make a voluntary disclosure. If OFAC develops guidelines for the property/casualty industry, OFAC's goal should be to encourage voluntary disclosure. To assure that a "voluntary disclosure" policy is effective, OFAC should adopt a reduced sanction if a person "voluntarily discloses" an apparent sanction violation, if no other entity has already reported the individual on the SDN list.

Finally we are concerned about the approach taken in the Bank Enforcement Guidelines that removes formulas for determining the amount of civil sanctions to a list of factors to be considered by OFAC in determining the amount of an OFAC violation penalty. By removing the formulas, the assessment of the violations becomes extremely subjective. Within the Bank Enforcement Guidelines the factors OFAC will consider in assessing a penalty does not assign specific weights to each factor, but merely identifies the factors. The guidelines

currently in place for insurance companies specifies the penalty for various violations and allows a company to know upfront what the ramifications are for violating OFAC. Any future guidelines for the insurance industry must be objective and include specific penalties for specific actions.

PCI requests that if the Department of Treasury initiates enforcement guidelines directed at the insurance industry that the oversight be placed within a department of the federal government, similar to any other industry that is not regulated by the federal government. Additionally, we request that reduced sanctions be applied when a company voluntarily discloses a violation and that any guidelines established be objective with regard to sanctions to be assigned for specific violations.

Once again we appreciate the opportunity to comment on the Interim Final Rule on the Economic Sanctions Enforcement Procedures for Banking Institutions. If you have any questions or would like to discuss our comments, please do not hesitate to contact me via the telephone at 847-553-3718 or via e-mail at kathleen.jensen@pciaa.net.

Sincerely,

/S/

Kathleen N. Jensen

March 13, 2006

VIA Electronic Mail

ATTN: Assistant Director of Records
Request for Comments (Enforcement Procedures)
Office of Foreign Asset Control, Dept. of the Treasury
1500 Pennsylvania Ave., N.W.
Washington, D.C. 20220

e-mail: www.treas.gov/offices/enforcement/ofac/comment.html

Re: ***Economic Sanctions Enforcement Procedures (FR Doc.06-278)***

To: Assistant Director of Records

We are pleased to respond on behalf of our member credit unions to the interim final rule, Economic Sanctions Enforcement Procedures for Banking Institutions, issued by the Treasury Department's Office of Foreign Asset Control. The Illinois Credit Union League represents over 400 credit unions in Illinois.

We are pleased to see that OFAC has taken into consideration the vast differences amongst financial institutions, meaning there is not a "one size fits all" approach when it comes to the implementation of an OFAC program by the financial institution and the enforcement of an OFAC program by the regulators. The risk matrices included with the interim final rule should be a helpful tool for a financial institution in determining OFAC and federal regulator expectations.

Another important issue addressed in the final interim rule is "Voluntary Disclosure." If a financial institution is proactive in its approach to compliance with OFAC requirements, as well as Bank Secrecy Act requirements, much consideration should be taken into account for the financial institution that discovered and reported the violation or potential violations to OFAC or the federal regulatory agency. Assessing equal penalties on a financial institution, whether the regulator found the violation or the financial institution found the violation and reported it in a timely manner, would be a major deterrent to a financial institution to spend the time and money to maintain a strong OFAC program.

We appreciate the opportunity to provide our comments on the OFAC's interim final rule, Economic Sanctions Enforcement Guidelines. We will be happy to respond to any questions regarding these comments or otherwise discuss our concerns with agency staff.

Very truly yours,

ILLINOIS CREDIT UNION LEAGUE

By: Niall K. Twomey
Technical Specialist

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Customs and International Trade Bar Association

March 13, 2006

Assistant Director of Records
Office of Foreign Assets Control
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Attention: Request for Comments

To Whom It May Concern:

Re: Economic Sanctions Enforcement Procedures for Banking Institutions, FR Doc. 06-278

The following comments are submitted on behalf of the Customs and International Trade Bar Association (CITBA) in response to the invitation of the Office of Foreign Assets Control (OFAC) in the captioned matter. 71 Fed. Reg. 1971 (January 12, 2006). CITBA was founded in 1926. Its members consist primarily of attorneys who concentrate in the field of customs law, international trade law and related matters. CITBA members represent United States exporters, importers and domestic parties concerned with matters that involve the United States export laws, customs laws, and other international trade laws, and related laws and regulations of federal agencies concerned with international commerce.

CITBA's comments respond to the invitation extended by OFAC to importers and exporters concerned with appropriate enforcement procedures. At the outset, CITBA commends the agency both for publishing regulations to explain its compliance and enforcement practices and for involving the public in advance. These comments will address two features of the interim final regulations, as those regulations might be adapted for application to import or export businesses.

First, the definition of "voluntary disclosure" in Appendix A to Part 501 (section I.D) provides that a banking institution cannot make a voluntary disclosure "if OFAC has previously received information concerning the conduct from another source, including, but not limited to, a regulatory or law enforcement agency ...." 71 Fed. Reg. at 1974.

Leaving aside the question whether this rule is appropriate for banking institutions, the rule is too narrowly drawn in the case of import and export businesses.

Whether a disclosure is "voluntary" should not depend solely upon whether another person has already provided information to OFAC concerning the potential violation. An importing or exporting company may be entirely unaware of any disclosure by another business, and thus acting in a voluntary manner when it makes its own disclosure. For example, several companies may be involved in a particular international transaction. OFAC should not mandate that only the "first to file" could make a voluntary disclosure. Rather, every company that voluntarily reports an apparent violation should receive the benefit of the voluntary-disclosure provisions. The regulation should not state categorically that a disclosure "is not deemed a voluntary disclosure," merely because another disclosure has been made by another party.

By revising the approach, OFAC will encourage more persons and entities to make disclosures. Thus, the regulation should provide OFAC with discretion to accept a voluntary disclosure when the circumstances indicate that the report was truly voluntary. In this context, OFAC should consider whether the company making the disclosure had actual knowledge of other disclosures concerning the same transaction and whether the company acted within a reasonable period after the apparent violation was discovered. Moreover, this determination should be made in the context of the other enumerated factors taken into account by OFAC, including the company's history of prior violations, its experience in importing or exporting, its size and number of OFAC-related transactions, and so forth. *See* Appendix A, § IV, 71 Fed. Reg. at 1974. To preclude a "voluntary disclosure" simply because another company has filed first is both unfair and bad policy.

Second, the elements of "Sound Banking Institution OFAC Compliance Programs" identified in Annex B might be usefully adapted to the operations of importers and exporters in a manner that would provide transparency and promote compliance. However, with respect to the identification of "high risk business areas," the transactions typically conducted by banking institutions are not relevant to importers and exporters. Examples of "high risk" factors for companies engaged in international trade might include as follows: the country of origin (for imports) or the final destination (for exports); the person or entity involved in the international transaction; or whether the product is transshipped through particular countries or ports that pose a risk.

In addition, OFAC might usefully consult the mitigating factors that are identified by the Bureau of Industry and Security (BIS) in its *Penalty Guidance in the Settlement of Administrative Enforcement Cases*, 69 Fed. Reg. 7867, 7870 (Feb. 20, 2004) (final rule).

Notably, under the BIS guidelines, a single error that gives rise to a series of related violations (for example, a series of exports all misclassified on the Commerce Control list) may be treated as a single violation. Likewise, the Bureau of Customs and Border Protection (CBP) publishes "reasonable care" guidelines and provides mitigation guidelines fur use in the case of apparent violations.[1] Notably, CBP identifies "contributory Customs error" among other mitigating factors. OFAC should apply similar factors in evaluating potential violations by importers and exporters.

Exporters seeking to comply with the BIS "safe harbor" rules currently consult a list of "red flags." *See, e.g., Revised "Knowledge" Definition, Revision of "Red Flags" Guidance and Safe Harbor, Reg. Id. No. 0694-AC94*, 69 Fed. Reg. 60,829 (Oct. 13, 2004; proposed rule). In addition, BIS promotes an "Export Management System" on its website, which includes a series of "screening elements" for exporters to check in course of order processing.[2] To both avoid confusion and promote compliance, OFAC should reference the same types of factors. Indeed, compliance is more likely if companies are able to apply a uniform set of guidelines with respect to identifying high risk transactions.

Finally, Annex B, section B.5, requires banking institutions not only to maintain license information but also to initiate an inquiry with OFAC regarding any "unclear" transaction or license. In the case of trading companies within a chain of transactions, however, the middlemen will not typically have any means to question the validity of an export license supplied by another company in the transaction. It should suffice to maintain a copy of the license and information that will allow OFAC to trace the transaction back to its source.

CITBA thanks the agency for the opportunity to submit comments and applauds the efforts to encourage industry cooperation and input. We look forward to a future

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[1] CBP publishes a "Reasonable Care" checklist, as well as "Mitigation Guidelines: Fines, Penalties, Forfeitures and Liquidated Damages," as follows: http://www.customs.treas.gov/linkhandler/cgov/toolbox/legal/informed_compliance_pubs/icp021.ctt/icp021.pdf and http://www.customs.treas.gov/linkhandler/cgov/toolbox/legal/informed_compliance_pubs/icp069.ctt/icp069.pdf.

[2] The Export Management System is found online at the following address: http://www.bis.doc.gov/exportmanagementsystems/EMSGuidelines.html.

notice of proposed rulemaking that will set forth the enforcement guidelines applicable to importers and exporters.

Respectfully submitted,

Melvin S. Schwechter
President
James R. Cannon, Jr.,
Chairman, International Trade Committee

March 2, 2006

Assistant Director of Records
ATTN: Request for Comments (Enforcement Procedures)
Office of Foreign Assets Control
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Economic Sanctions Enforcement Procedures for Banking Institutions
FR Doc. 06-278

Dear Sir or Madam:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to comment on the interim rule issued by the Office of Foreign Assets Control (OFAC) that applies a risk-based approach to OFAC compliance and enforcement for banking institutions.

Overview of ICBA Comments

ICBA strongly supports the interim rule's movement to a risk-based assessment for compliance and enforcement of OFAC regulations by banks. ICBA also endorses efforts by OFAC to coordinate with the banking agencies and to enhance communications between OFAC, the banking regulators and community banks. ICBA believes that the risk matrix outlined in the interim rule, if kept up-to-date, will provide a useful tool for community banks as they assess and address risks with their OFAC compliance efforts. Finally, ICBA appreciates OFAC's recommendations that banks assign OFAC compliance duties, regularly audit for OFAC compliance, and include

[1]The Independent Community Bankers of America represents the largest constituency of community banks of all sizes and charter types in the nation, and is dedicated exclusively to representing the interests of the community banking industry. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.

With nearly 5,000 members, representing more than 18,000 locations nationwide and employing over 265,000 Americans, ICBA members hold more than $876 billion in assets $692 billion in deposits, and more than $589 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

OFAC training, but does not believe these recommendations should be elevated to regulatory mandates.

Background

Generally, OFAC rules require banks to block transactions or freeze assets for entities on the OFAC specially designated nationals (SDN) lists. The interim rule, effective February 13, expands on procedures outlined in the Bank Secrecy Act/Anti-Money Laundering (BSA/AML) Examination Manual released last June. Continuing that effort, OFAC plans to cooperate with federal banking regulators in its enforcement program. OFAC is publishing these procedures because of the unique role banks play in implementing the OFAC program.

Under the risk-based approach, OFAC will consider a bank's overall program instead of evaluating each possible violation before taking enforcement action. Generally, banks must have a risk-based OFAC compliance program. The rule includes a matrix to help banks evaluate potential risks. The procedures take into account the fact that each bank is unique and that its compliance program should be tailored to its circumstances, including its size, business volume, customer base, and product lines. Similar to BSA requirements, OFAC strongly recommends banks designate an OFAC compliance officer, periodically test the OFAC compliance program, and provide adequate employee training. OFAC will also notify the bank and give it an opportunity to respond before taking action. However, in cases of apparent violations, OFAC will periodically review the bank's compliance program.

OFAC plans to issue similar procedures for securities broker-dealers, insurance companies and other financial institutions in the near future.

ICBA Comments on Specific Elements of the Proposal

Risk-Based Compliance and Enforcement. Similar to other risk-based compliance programs applied by community banks, OFAC would require banks to tailor their OFAC compliance programs based on the size of the bank, its market, and its product offerings. This approach would replace the current compliance focus that looks at individual transactions. ICBA strongly supports the move to emphasize risk instead of individual transactions. This is consistent with many other elements of bank supervision, especially the approach to Bank Secrecy Act (BSA) and anti-money laundering (AML) compliance outlined in the BSA/AML Examination Manual issued by FinCEN, the federal banking agencies and OFAC last June. Moreover, a risk-based approach helps ensure that limited resources are devoted to those areas where the risks are greatest.

Coordination with Banking Supervisors. In carrying out its enforcement responsibilities, OFAC plans to coordinate with the federal banking supervisory agencies. ICBA believes this is appropriate and strongly supports this step. Fundamentally, the banking agencies have responsibility for supervising all aspects of a bank's operations and are best positioned to evaluate a bank's performance. Since the banking agencies

One Thomas Circle, NW Suite 400 Washington, DC 20005 ▪ (800)422-8439 ▪ FAX: (202)659-1413 ▪ Email:info@icba.org ▪ Web site:www.icba.org

regularly review bank operations, they are also best positioned to assess compliance with OFAC requirements as well as take steps to help the bank address potential deficiencies before they become problematic. ICBA also believes that open communication in all areas of compliance among the different agencies charged with oversight for laws and regulations is critical. The approach outlined in OFAC's interim rule will help foster that communication.

Egregious Violations. Although OFAC plans to assess a bank's overall compliance efforts before taking any enforcement action, the agency also reserves the right to take immediate action based on a single transaction where the violation was especially "egregious." ICBA does not disagree with this element of the interim rule, since there will be instances when a violation is so obvious or drastic that immediate action is warranted. However, there are many instances when the nature of the violation may not be as obvious or where further communication with the bank's supervising agency would be useful. ICBA encourages OFAC to communicate with a bank's supervising agency in all instances, even where a violation is deemed "egregious." ICBA also recommends that OFAC offer banks guidance, perhaps through answers to frequently-asked-questions, to indicate what constitutes "egregious" activities. ICBA does not believe a regulatory definition of "egregious" is necessary, but does believe that banks – and bank regulators – need additional guidance to understand what factors OFAC considers important such that immediate action is warranted.

Elements Considered Before Enforcement. Before imposing any enforcement action, OFAC will consider information supplied by the bank and its federal banking supervisor. As noted above, ICBA considers cooperation with the bank's supervisor not only appropriate but logical. ICBA also believes that it is useful to discuss the situation with the bank as well so that the bank has an opportunity to explain the situation since it may not be what it appears to be. This communication between OFAC, the banking supervisor and the bank also provides two important benefits. First, it ensures that the bank understands the situation fully and can take appropriate steps to avoid a repeat of the problem, if there is one. Second, it ensures all parties involved understand the rationale for the steps being taken.

Before taking enforcement action, OFAC would also consider the size of the bank and the number of OFAC-related transactions it handles, the bank's overall OFAC compliance program, whether the violation indicates systemic compliance problems, whether the violation was voluntarily disclosed by the bank, efforts to conceal the violation, whether the violation was due to a technical error, and actions taken by the bank to correct the error. ICBA strongly supports this step, since this is consistent with the overall risk-based approach being applied generally in banking supervision, but especially in the area of BSA/AML compliance (while OFAC and BSA compliance are distinct, the application of the two areas is being coordinated by many institutions, especially community banks). In addition to the factors listed, ICBA also recommends OFAC consider the experience level of bank employees involved.

Recommendations for Bank OFAC Compliance Programs. The interim rule includes a matrix of risk factors a bank should evaluate to help assess its OFAC

One Thomas Circle, NW Suite 400 Washington, DC 20005 ▪ (800)422-8439 ▪ FAX: (202)659-1413 ▪ Email:info@icba.org ▪ Web site:www.icba.org

compliance program. ICBA believes this matrix is especially helpful, and encourages OFAC to keep the matrix regularly updated to address new situations or risks that arise over time.

OFAC also recommends that banks appoint an OFAC compliance officer. An informal review of ICBA leadership bankers found that, while many community banks do not currently specifically designate an OFAC compliance officer, duties for OFAC compliance generally are assigned to the same individual responsible for BSA/AML compliance. This allows the compliance function for the two areas to be coordinated, a step consistent with the BSA/AML Examination Manual.

In addition to designating a compliance officer, OFAC recommends that banks conduct periodic independent testing of their OFAC compliance programs. Community banks report that they include OFAC compliance testing during regular audits to ensure OFAC procedures are effective and appropriate. Generally, this audit is conducted annually. For community banks located in rural communities with low-risk profiles, the audit is generally conducted by internal audit staff. ICBA believes the recommendation is appropriate but does not believe it should be a elevated to a regulatory mandate, especially under a risk-based approach.

Finally, OFAC recommends banks include training for bank staff on OFAC compliance requirements. Community banks report they include OFAC training for staff to ensure awareness and understanding of OFAC requirements. The training is generally part of the overall BSA compliance training for staff through videos, in-house training sessions, and on-line training software or outside seminars. Again, ICBA agrees with this as a recommendation but not as a regulatory requirement.

Conclusion

Overall, ICBA supports OFAC's interim rule that places greater emphasis on risk for OFAC compliance and enforcement for banks. ICBA also strongly endorses the elements of the interim rule that serve to enhance communications between OFAC, bank regulatory agencies, and individual banks. ICBA looks forward to continuing to work with OFAC to streamline and simplify OFAC compliance and enforcement requirements to ensure that limited resources are focused where they provide the greatest return.

Thank you for the opportunity to comment. If you have any questions or would like any additional information, please contact the undersigned by telephone at 202-659-8111 or by e-mail at robert.rowe@icba.org.

Sincerely,

Robert G. Rowe, III
Regulatory Counsel

CUNA & Affiliates
A Member of the Credit Union System

Credit Union
National Association, Inc.

601 Pennsylvania Ave. NW, South Bldg.
Suite 600
Washington, D.C.
20004-2601

Telephone:
(202) 638-5777
Fax:
(202) 638-7734

Web Site:
www.cuna.org

March 13, 2006

Assistant Director of Records
ATTN: Request for Comments (Enforcement Procedures)
Office of Foreign Assets Control
Department of the Treasury
1500 Pennsylvania Ave., N.W.
Washington, D.C. 20220

Filed via: www.regulations.gov

RE: OFAC Economic Sanctions Enforcement Procedures for Banking Institutions (F.R. Doc. 06-278)

Dear Sir or Madam:

The Credit Union National Association (CUNA) appreciates the opportunity to comment on the Office of Foreign Assets Controls (OFAC's) interim final rule regarding economic sanctions enforcement procedures for banking institutions. The interim final rule provides a general procedural framework for the enforcement of economic sanctions enforcement programs with respect to banking institutions. Under the rule, OFAC will take an institutional rather than a transactional approach to enforcement of the OFAC regulatory regime to bar criminals and terrorists from using the U.S. financial system to carry out their illegal activities. OFAC rules are intended ensure that financial institutions block transactions of any person appearing on a list of Specially Designated Nationals and Blocked Persons (SDN List). CUNA represents approximately 87 percent of our nation's 8,900 state and federal credit unions, which serve nearly 87 million members.

CUNA supports OFAC's separate enforcement process for credit unions and other financial institutions, which is designed to take into consideration the role of such institutions, the nature of the transactions in which they engage, and the fact that they are heavily regulated. We also generally support the procedural framework as set forth in the interim final rule. In particular, we think the periodic institutional review makes sense. Under the interim final rule, prior to taking enforcement actions, OFAC generally will review violations or suspected violations by a particular institution over a period of time, rather than evaluating each apparent violation independently. The interim final rule indicates that this review will take place for institutions with violations or suspected violations. We

believe it is appropriate that institutions that do not have violations or suspected violations will not be subject to this periodic review. We do have one concern with the periodic review. The new procedures call for a periodic review of institutions with violations, except for "significant violations for which prompt action...is appropriate." The rule does not define what significant violations entail; we think it should be addressed in the guidelines.

CUNA supports OFAC's approach to take into consideration in its enforcement procedures that the OFAC compliance program at each institution should be tailored to its unique circumstances. We think it is important that OFAC recognizes that the institution's compliance program must reflect the particular circumstances of each institution, including: the institution's business volume; the institution's members or customers; the products and services offered; the institution's history of sanctions violations; the number of OFAC-related transactions handled correctly compared to the number and nature of transactions handled incorrectly; the quality and effectiveness of the institution's overall OFAC compliance program; and whether the apparent violation or violations in question are the result of systemic failures at the institution or are atypical in nature. CUNA appreciates the specific inclusion of the size of the institution as one of the factors; and we further urge OFAC to ensure that its regulations are not overly burdensome on smaller institutions, including smaller credit unions, with limited staff and resources.

However, we have a concern with one of the enumerated factors affecting OFAC's decision as to the appropriate administrative/enforcement action – voluntary disclosure to OFAC of the apparent violation(s) by the institution. Specifically, we have a concern with the term "voluntary" defined in this context to be contingent on another party's requirement to file a report on the same transaction, whether or not the other party actually files a report. While OFAC indicates that the agency will consider such reports by an institution as cooperation and, therefore, as a mitigating factor in its enforcement decisions, we feel this would not sufficiently serve the agency's goal of encouraging voluntary disclosure. We urge OFAC to redefine voluntary disclosure to include any disclosure reported by an institution, even if another party already filed a report with OFAC concerning that conduct. Financial institutions typically are doing their best to report information to OFAC voluntarily and are not always able to know or control whether or not another party reports information to OFAC. Further, we propose that OFAC consider additional incentives for voluntary reporting, such as zero or low penalties for first offenses and a significant penalty/fine reduction for subsequent violations that are voluntarily reported. We feel strongly that these would assist OFAC's efforts to obtain timely information to most effectively administer and enforce economic and trade sanctions programs against targeted countries and groups of individuals, such as terrorists and narcotics traffickers.

We think the two annexes in the interim final rule will prove useful for financial institutions: Annex A - OFAC Risk Matrices and Annex B - Sound Institution OFAC Compliance Programs. We feel the two OFAC Risk Matrices in Annex A will help institutions understand whether their examiners will consider their operations to be in a category of high, moderate or low risk for OFAC violations. And Annex B, containing items that are characteristic of effective OFAC compliance programs, provides helpful guidance for financial institutions in maintaining effective OFAC policies, procedures and controls that are commensurate with the institution's OFAC "risk profile."

However, we do have some recommendations with regard to the OFAC Risk Matrices in Annex A. Matrix A is from the Federal Financial Institution's (FFIEC's) Bank Secrecy Act/Anti-Money Laundering Examination Manual (BSA/AML Manual), which indicates that an institution's policies, procedures, and processes for reviewing transactions and transaction parties should reflect the institution's OFAC risk assessment. OFAC regulations involve strict liability, requiring financial institutions to block or "freeze" property and payment of any funds transfers or transactions involving blocked countries or individuals on the SDN List and to report the "blocks" within 10 business days of occurrence. We request OFAC to consider providing a safe harbor from the strict liability standards in its regulations for institutions that perform risk assessments and meet all the other requirements for a sound OFAC compliance program as indicated in Annex B.

According to the interim final rule, OFAC may grant up to thirty days for an institution to respond to the preliminary assessment of the enforcement action(s) the agency intends to pursue. In addition, OFAC may grant further extensions "at its sole discretion where it determines this is appropriate". We believe that OFAC should permit at a minimum thirty days for an institution to respond and routinely allow an additional thirty day extension upon request.

Finally, we urge OFAC to conduct a review of these enforcement procedures after they have been in place for one year to assess how effectively they are working and to allow financial institutions and financial institution regulators the chance to provide feedback to further improve the guidelines.

Thank you for the opportunity to comment on the interim final rule. If you have any questions about our comments, please contact Associate General Counsel Mary Dunn or me at (202) 638-5777.

Sincerely,

Catherine A. Orr

Catherine A. Orr
CUNA Senior Regulatory Counsel

March 10, 2006

Assistant Director of Records
Office of Foreign Assets Control
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington D.C. 20220

Attention: Request for Comments (Enforcement Procedures)

Re: Economic Sanctions Enforcement Procedures for Banking Institutions
71 FR 1971 (January 12, 2006)

Dear Madam or Sir:

America's Community Bankers (ACB)[1] appreciates the opportunity to comment on the interim final rule issued by the Office of Foreign Assets Control (OFAC) that sets forth economic sanctions enforcement procedures for federally regulated depository institutions.[2] Significantly, the rule modernizes OFAC's enforcement procedures to reflect the necessity of risk-based compliance systems. The revised procedures also clarify that the federal banking agencies will examine depository institutions for compliance and will refer any apparent violations to OFAC for further investigation and possible enforcement action. OFAC will consider a list of sixteen factors in determining whether or what kind of enforcement action is warranted.

ACB Position

Community bankers recognize that OFAC compliance helps ensure that terrorists and international narcotics traffickers do not gain access to the United States financial system. However, perfect compliance with OFAC economic sanctions requirements is not possible due to the volume of financial transactions that are processed each day. Therefore, we strongly endorse OFAC's departure from a strict liability standard for OFAC compliance. We believe it is appropriate for OFAC to apply the sixteen factors enumerated in the interim final rule when determining what kind of enforcement action is warranted in a particular case.

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[1] America's Community Bankers is the member driven national trade association representing community banks that pursue progressive, entrepreneurial and service-oriented strategies to benefit their customers and communities. To learn more about ACB, visit *www.AmericasCommunityBankers.com.*

[2] 71 Fed. Reg. 1971 (January 12, 2006).

While we appreciate the important changes set forth in the interim final rule, we request OFAC to clarify that:

1) A separate, formal OFAC program is not a regulatory requirement; and
2) Institutions may incorporate OFAC policies, procedures, and controls into the overall anti-money laundering (AML) program.
3) OFAC is working to balance compliance requirements with the size and capacity of the depository institution.

While OFAC's new risk-based approach is appropriate for insured depositories, we do not believe this standard is appropriate for financial service providers that are not as regularly and vigorously examined for Bank Secrecy Act (BSA) and OFAC compliance.

Risk-Based Compliance

ACB strongly supports OFAC's new emphasis on risk management. Allowing insured depositories to tailor their policies and procedures to actual OFAC risk balances foreign policy objectives of the United States with the regulatory compliance burden placed on depository institutions. For the reasons described below, the new enforcement procedures will provide a more realistic and more efficient means of ensuring compliance with OFAC sanctions.

Risk Management Experience. Community banks must assess and manage risk. Every day, community bankers identify, analyze, and control risks associated with extending credit to new customers, introducing a new product into the marketplace, and making investments. Depository institutions also apply risk management techniques to the compliance function. For example, community banks continually evaluate their AML risk and adjust their compliance programs accordingly. In exchange for the ongoing monitoring and testing of these programs, institutions do not expect to be cited by their regulator when one or even a few transactions are processed improperly. Rather, the institution will be cited when the compliance system has not been implemented, is inappropriate, or when there is a systemic breakdown in internal processes and/or controls. Institutions will also be cited for AML violations that have not been corrected.

ACB strongly believes that this same approach should be applied to OFAC compliance. An institution should not be presented with an enforcement action or a civil penalty for failing to identify or block a single transaction as required by the OFAC sanctions program. Rather, OFAC should focus on whether institutions have implemented policies, procedures, and internal controls that are commensurate for the OFAC risk posed to that particular institution. To do otherwise would impose a disproportionate burden in exchange for compliance.

Realistic Compliance. Due to the daily transaction volume that is processed through the U.S. payments system, it is possible that an institution with stringent OFAC controls could inadvertently process a prohibited transaction. As a result, we believe that the quality of the institution's OFAC program and history of OFAC compliance should be taken into account as OFAC determines what, if any, administrative action is appropriate.

It is not feasible or economical to compare all parties in every banking transaction to persons and entities on the OFAC list. For example, it would be impracticable and costly to screen the drawer and payee of every check to determine whether the transaction involves a prohibited person or entity.

Bank Examination Process. The focus on risk management is appropriate because depository institutions are subject to a regular, vigorous examination process by the federal banking agencies. The banking regulators understand the business of banking and industry best practices. They are in the best position to evaluate an institution's OFAC risks and controls and recommend appropriate corrections where necessary. The banking agencies already examine for BSA compliance and examination for OFAC compliance is a natural extension of the BSA examination function. ACB believes that a banking regulator's assessment of an institution's compliance program and history of OFAC compliance record should be a significant factor in any contemplated OFAC penalty action, but it should not be determinative.

Risk Matrix. With information from OFAC about what constitutes high-risk activities, persons, accounts, and geographic location, depository institutions can develop policies, procedures, and internal controls that devote OFAC compliance resources to areas within the institution where they are most needed and would be the most effective. We believe the OFAC Risk Matrix in Appendix A to the new enforcement procedures is helpful in this regard. As OFAC identifies additional risks in the future, we request OFAC to communicate this information to the financial services industry and update the Risk Matrix accordingly. We also request that OFAC work with the regulators to ensure that Appendix M in the BSA/AML Examination Manual is kept current.

Adoption of Formal OFAC Program

Appendices A and B and the preamble to the interim final rule suggest that all insured depositories must implement a formal, written, board approved OFAC compliance program. It is implied that all institutions will be expected to designate an OFAC officer, conduct special OFAC training for employees, and separately audit the institution's OFAC program.

ACB understands that implementing policies and procedures based on OFAC risk is a predicate for eliminating the strict liability for improperly processing an OFAC transaction. However, no law or regulation requires institutions to adopt a formal OFAC program. Some community banks have adopted a separate OFAC program and others have incorporated OFAC procedures into the institution's broader AML program. This decision is mostly determined by the size of an institution and the number of its employees. A community bank's OFAC officer is likely to be the institution's BSA officer; OFAC training is often conducted simultaneously with BSA training; and independent testing of the OFAC program is conducted concurrently with independent testing of the BSA/AML program.

As written, we are concerned that OFAC's enforcement procedures may give bank management the impression that the development of a separate, formal OFAC program is mandatory. For some small banks and thrifts, this would not be possible. In addition, banking agency staff often are compelled to follow guidance, citing violations of the guidance in examination reports. We are concerned that this tendency may also occur with OFAC's Appendices A and B. Banking agencies have tremendous discretion, which may vary from examiner to examiner and region to region in the interpretation and application of this material. Therefore, ACB requests that OFAC clarify that:

1) A separate, formal OFAC program is not a regulatory requirement.
2) Institutions may incorporate OFAC policies, procedures, and controls into the overall AML program.
3) OFAC is looking to balance compliance requirements with the size and capacity of the depository institution.

Other Financial Service Providers

All financial institutions have a responsibility to prevent the U.S. financial system from being used by money launderers and terrorists. However, we continue to be concerned about the level of OFAC compliance oversight for other financial sector entities. Unlike insured depository institutions, insurance companies, finance companies, and mortgage brokers are not vigorously examined for BSA/AML or OFAC compliance. Therefore, OFAC should not apply the same enforcement procedures or give the same weight to the compliance programs of these less regulated financial service providers.

Conclusion

ACB reiterates its support for OFAC's modified enforcement procedures for depository institutions. We appreciate OFAC's acknowledgement that perfect compliance with sanctions requirements is not possible, but that implementing risk-appropriate policies and procedures can control the risk of processing an OFAC transaction.

Thank you for the opportunity to comment on this matter. Should you have any questions, please contact the undersigned at 202-857-3121 or pmilon@acbankers.org or Krista Shonk at 202-857-3187 or kshonk@acbankers.org.

Sincerely,

Patricia Milon
Chief Legal Officer and
Senior Vice President,
Regulatory Affairs

AMERICAN BANKERS ASSOCIATION

1120 Connecticut Avenue, NW
Washington, DC 20036

1-800-BANKERS
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Richard R. Riese
Director
Center for Regulatory Compliance
Phone: 202-663-5051
Rriese@aba.com

March 13, 2006

Office of Foreign Assets Control
Department of the Treasury
Assistant Director of Records,
ATTN: Request for Comments
(Enforcement Procedures)
1500 Pennsylvania Avenue, NW.,
Washington, DC, 20220

Re: "Economic Sanctions Enforcement Procedures for Banking Institutions"
71 Federal Register 1971-1976 (January 12, 2006)

To Assistant Director of Records:

The American Bankers Association (ABA) submits this comment in response to the interim final rule published by the Office of Foreign Assets Control (OFAC) detailing its "Economic Sanctions Enforcement Procedures for Banking Institutions."

The American Bankers Association, on behalf of the more than two million men and women who work in the nation's banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership-which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks-makes ABA the largest banking trade association in the country.

ABA Supports OFAC's New Enforcement Approach

ABA is encouraged that OFAC has recognized the special role banks play in the implementation of OFAC sanction programs and responded by redefining its enforcement approach toward the industry. As expressed in the preamble, the new enforcement procedures "take into account that each banking institution's situation is different and that its compliance program should be tailored to its unique circumstances. This includes an analysis of its size, business volume, customer base, and product lines."

ABA endorses the key components of OFAC's new enforcement policy as described in the rule's preamble:

- Prior to taking enforcement action, OFAC will generally review apparent violations over a period of time, rather than evaluating individual violations independently.
- OFAC's review will be conducted in the context of the bank's overall OFAC compliance program and performance record.
- OFAC will give deference to a bank's primary regulator's evaluation of its compliance program.
- Among a broad range of comparative performance measures, OFAC will give positive consideration to voluntary disclosure and self-initiated corrective action.

ABA Supports Greater Weight for Comparison of Performance Against Similarly Situated Banks

In response to OFAC's specific invitation to comment on the weight of certain factors, ABA believes that to ensure uniformity of OFAC's enforcement discretion a comparison of an institution's record to similarly situated banks is a factor that should receive more significant weight than recognized in the factors enumerated in Section IV of the rule. Specifically, factor A of the section is limited to the subject bank's own history of sanction violations without regard for its comparison to similarly situated banks. Relevant to designating similarly situated banks are criteria such as complexity of operations, volume of at-risk transactions, level of international business activity and severity of the underlying violations. Accordingly we urge OFAC to modify factor A so it considers a bank's sanction violation history in comparison with similarly situated institutions.

Other ABA Suggestions

ABA recommends that OFAC reconsider its exclusion from the definition of voluntary disclosure those notifications to OFAC where another person's blocking or funds transfer rejection report is required to be filed—whether or not the required filing is made. OFAC provides no rationale for such a disallowance when the policy goal of self-identifying and self-correcting compliance is the end result and is entirely independent of another institution's action or inaction. Although OFAC reserves a lesser weight for self-reporting that the rule excludes from consideration as voluntary disclosure, no such reduced consideration is consistent with sound compliance principles.

Although the rule explicitly endorses distinguishing the treatment of varying banking business components base on their risk, from time-to-time this distinction is lost. For instance, in Annex B, Section B1, it states that "new accounts should be compared with the OFAC list prior to allowing transactions." This is not a risk-based rule because it treats all types of transactions the same, ignores other effective controls like overnight screens and interdiction, and takes no account of the potential for confrontation between bank personnel and unfamiliar new customers. Alternatively, "new accounts are to compared with the OFAC list consistent with risk-based procedures" provides the requisite operational latitude.

Another departure from the risk-based compliance standard occurs in Annex B, Section C where the rule states, "an in-depth audit of each department in the banking institution might reasonably be conducted at least once a year." This minimum frequency and scope is contrary to managing audit resources based on risk and at odds with statements made by the banking agency representatives during the rollout of the Interagency BSA/AML Exam Manual.

Applying Procedures to Large Corporate Structures

Pending OFAC completion of enforcement procedures for other financial industry providers, ABA believes that these procedures should be applied to affirm sound enterprise-wide compliance risk management giving due consideration to the examination experience of the federal banking agencies. As the preamble recognizes, many financial industries are regulated by government entities without extensive OFAC expertise. Where OFAC compliance across a large corporate structure is coordinated within an institution (including holding company) subject to federal banking agency oversight, OFAC should follow the banking enforcement procedures when evaluating the OFAC compliance performance of the large corporate structure or any of its component financial operations.

Conclusion

ABA appreciates the risk-based compliance-oriented enforcement policy that OFAC has adopted. We believe that this approach conforms with general banking agency expectations for internal compliance controls and the new Interagency BSA/AML Exam Manual. Improved coordination between OFAC enforcement and BSA/AML oversight will lead to better performance by banks and more consistent supervision throughout the financial services industry.

Respectfully Submitted,

Richard R. Riese
Director, Center for Regulatory Compliance

HOWREY LLP

T 202.783.0800
F 202.383.6610
FID# 53-0231650

March 10, 2006

Assistant Director of Records
Attention: Request for Comments (Enforcement Procedures)
Office of Foreign Assets Control
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Re: Comments of Non-Bank Funds Transmitters Group with Regard to OFAC Interim Final Rule with Request for Comments, January 12, 2006, 71 Fed. Reg. 1971, FR Doc. 06-278

The Non-Bank Funds Transmitters Group ("Group") is composed of the leading national non-bank funds transmitters including Western Union Financial Services, Inc., MoneyGram International, Travelex Americas, American Express Travel Related Services, RIA Financial Services, Comdata Network, Inc. and Sigue Corporation. The Group is submitting these comments in response to the express request by OFAC in the above-referenced notice to provide comments on how the enforcement procedures articulated in the notice might be modified for use for non-bank entities such as money transmitters and payment instrument issuers.

The Group appreciates the opportunity to provide comments to OFAC with regard to enforcement procedures and guidelines which might be adopted in the near future to aid responsible non-bank entities to comply with OFAC regulations. The Group noted that the Federal Financial Institutions Examination Council ("FFIEC") in promulgating its "Bank Secrecy Act Anti-Money Laundering Examination Manual" in 2005 incorporated a risk-based compliance mandate for those banks under the jurisdiction of one of the federal bank regulators. The system adopted imposed a mandate from the bank regulators, not OFAC, to implement compliance programs designed to achieve, to the maximum extent practicable, OFAC compliance. In the current notice, OFAC appears to be making clear that such compliance programs adopted and utilized in good

faith, will be an important factor in determining whether and to what extent OFAC will assess penalties should violations of the OFAC regulations occur. In short, the current OFAC-related regulatory scheme is a two-part process. That is, OFAC itself does not prescribe any particular compliance program. The bank regulators, on the other hand, prescribe risk-based compliance procedures, which if properly implemented and utilized, will be taken into account should a bank conduct a transaction which violates OFAC sanctions.

In light of the OFAC regulatory scheme, the two-stage approach in the case of banks would appear to be effective because the bank regulatory agencies provide to banks in the United States a single uniform compliance directive. Thus, while non-banks are not in a position to provide definitive comment on whether the precise FFIEC guidance for OFAC compliance works for all banks, the Group believes that a uniform national approach for a national program -- OFAC compliance -- is absolutely necessary. Unfortunately, while the underlying concepts could be transferable between industries, the precise guidance provided to banks in the FFIEC manual, including, for example, the "OFAC Risk Matrices" is generally inapplicable to non-bank entities because it is focused on the unique operating systems and account based relationships at banks.

In the case of non-bank entities such as money services businesses, which conduct money transmission, sell or issue stored value products, sell or issue travelers checks, money orders, drafts, etc., there is no single regulator or regulator group such as the FFIEC. While 45 states, the District of Columbia and Puerto Rico license payment instrument issuers (and a slightly smaller subset of states also regulate money transmitters), the agencies which regulate and license such entities are the various state banking departments, securities departments, etc. While at least two multi-state organizations exist to coordinate state activities with regard to non-bank entities, principally the Money Transmitters Regulators Association (MTRA) and to a far lesser extent the Conference of State Bank Supervisors (CSBS), neither organization has comprehensive state membership and neither promulgates on a nationwide basis, uniform compliance guidelines, mandates, or examination matrices. In short, there is no FFIEC to promulgate a similar national, uniform OFAC compliance directive for non-banks. If the states are left to go it alone, there is a significant risk that a

multitude of divergent and conflicting OFAC compliance requirements will be promulgated by state regulators who have little or no familiarity with the OFAC program and/or the underlying risk-based compliance philosophy currently embraced at the federal level by both OFAC and the federal bank regulators.

Therefore, while the philosophical approach adopted by the federal bank regulators and OFAC appears positive and designed to permit individual entities the flexibility to construct OFAC compliance procedures which best suit their unique businesses, in the case of non-bank entities, OFAC should take the lead to articulate clearly this risk-based approach for non-banks in order to preclude the promulgation at the state level of counter-productive and conflicting interpretations, initiatives and rigid rules, e.g., "OFAC requires the use of an automated point of sale system to scan purchaser names for instrument sales . . ."etc. The issue of which entity is responsible for which surveillance systems, is important in the case of non-banks because most sell their services through "agents" -- independent sales outlets who provide such services ancillary to some other primary business.

Experience with the recently executed memorandum of understanding between the state regulators and FinCEN and the IRS, underscores the importance of clear direction from OFAC. In the context of the aforementioned BSA focused memoranda of understanding, the states, with lack of guidance from federal authorities, have been pursuing examinations of non-banks for compliance with the Bank Secrecy Act's recordkeeping and reporting requirements. In the course of these state "BSA examinations" of non-banks, many states have begun to pursue inquiry into OFAC compliance. The problem, of course, is that the states have been provided with little or no guidance concerning OFAC requirements and many of the state regulators do not have sufficient training and authoritative guidance on the appropriate procedures or screening requirements to take into account the variety of types of product, types of customer, destination of the transmission, etc. common with non-bank entities.

The problem is compounded by the fact that non-bank money transmitters typically do not have customer accounts, unlike banks. For example, the typical money order has a face value of $200 or less and is sold at a convenience store or a supermarket to a retail customer who does not

provide a name. Money transmissions, on the other hand, are typically at a transaction level of less than $400 and while a name of a sender and recipient is provided, no customer identification is usually sought or obtained at such levels. The bottom line is that the information available to providers of non-bank financial services is often far less than that available to depository institutions. This does not suggest, of course, that non-bank financial institutions should not employ reasonable risk-based OFAC compliance screening and other tools. It does mean, however, that the screening procedures, tools and regulatory expectations with regard to their implementation, will be different in the case of non-banks. The bottom line is that as OFAC screening procedures have taken center stage in the current regulatory environment, the regulated industry needs guidance that will provide to it the framework for implementation of monitoring programs that fit the unique operations and customer base of non-bank providers.

Particularly in light of the fact that state regulators are taking increased interest in OFAC enforcement, it is imperative that OFAC act as soon as possible to promulgate, perhaps in the context of mitigation guidelines, a reasonable risk-based compliance approach for non-bank entities. As indicated above, unequivocal direction is urgently needed to avoid inequities and misunderstanding of a program which is not well understood by state regulators throughout the United States.

The Group and its members will be pleased to provide to OFAC such additional information as may be of assistance to OFAC so that the agency can better understand the unique characteristics of the various types of non-bank entities and the specific financial services which they provide.

Thank you for the opportunity to comment.

Ezra C. Levine

Bank of America

Los Angeles Legal Department
300 S. Grand Ave., 19th Floor
Los Angeles, CA 90071
Tel 213.229.1150
Fax 213.228.2610
E-mail: david.h.miller@bankofamerica.com

February 7, 2006

Assistant Director of Records
Office of Foreign Assets Control
U. S. Department of the Treasury
1500 Pennsylvania Avenue, N. W., 2nd Floor
Washington, D. C. 20220

ATTN: Request for Comments (Enforcement Procedures)
FR Doc. 06-278; Office of Foreign Assets Control

Dear Sir or Madam:

This comment letter is submitted on behalf of Bank of America Corporation ("Bank of America") to the Office of Foreign Assets Control ("OFAC") in response to the interim final rule with request for comments (the "Interim Final Rule") on the subject of "Economic Sanctions Enforcement Procedures for Banking Institutions". The Interim Final Rule was published in the Federal Register on January 12, 2006.

Bank of America is one of the world's largest financial institutions, serving individual consumers, small businesses and large corporations with a full range of banking, investing, asset management and other financial and risk-management products and services. The company provides unmatched convenience in the United States, serving 38 million consumer and small business relationships with 5,800 retail banking offices, more than 16,700 ATMs and award-winning online banking with more than 14 million active users. Bank of America appreciates the opportunity to comment on the Interim Final Rule.

Bank of America applauds OFAC's proposal to evaluate a banking institution's apparent OFAC-related violation in the context of the institution's overall OFAC compliance program. In the past, the imposition of penalties by OFAC has appeared to have an inconsistent consideration of an institution's history of OFAC compliance, voluntary disclosure to OFAC of potential violations, provision to OFAC of useful enforcement information, or the number of transactions successfully blocked. We agree that OFAC should take a more holistic approach, rather than evaluate each apparent violation independently.

Bank of America believes that a voluntary disclosure of a potential violation should be considered a "voluntary disclosure" under the Final Interim Rule whether or not another party is required to file a report concerning the same transaction. Such voluntary disclosures provide OFAC with important additional information about the transaction that may assist OFAC in understanding the transaction and identifying other parties to the transaction. Such voluntary disclosures often contain important mitigating factors. A full disclosure by a financial institution should not be given less consideration because OFAC has additional sources of information about the same transaction.

Bank of America disagrees that the first factor in OFAC's consideration of enforcement procedures against a banking institution should be: *"A. The institution's history of sanctions violations."* Large banking institutions handle millions of transactions each day and, despite state-of-the-art interdiction systems, frequent staff training and the institution's best efforts, it is statistically inevitable that a large bank will have inadvertent violations of OFAC sanctions. Inadvertent violations that do not evidence a systemic weakness in an institution's OFAC compliance program should not result in penalty proceedings, nor should inadvertent violations that occurred in the past be used to classify a large banking institution as a "repeat offender". We believe that the factor quoted above should be changed to *"A. The institution's history of sanctions violations, taking into account the size of the institution and whether past violations were intentional or inadvertent."*

Bank of America applauds the publication of the OFAC Risk Matrices (as Annex A to the Final Interim Rule), and believes that the matrices are a very valuable tool for creating an effective risk-based OFAC compliance program.

Finally, with respect to Annex B of the Final Interim Rule, entitled "Sound Banking Institution OFAC Compliance Programs", we note that two recommendations are aspirational in nature and to our knowledge not possible to achieve for most financial institutions. First, the statement "New accounts should be compared with the OFAC lists prior to allowing transactions" appears to be a new requirement that is not consistent with existing practices at leading U.S. financial institutions. Accepting a deposit to open a new account, and then screening all new accounts overnight for OFAC compliance, is a valid and effective practice. By filtering new accounts on an overnight basis, new deposits can be blocked rather than turned away. The interdiction of funds belonging to sanctioned persons is a key goal of OFAC's sanctions programs. In addition, applying the filter while opening an account can place a bank teller in harm's way if the teller must inform the person who is attempting to open the account that such person is a sanctioned person and cannot open an account.

Second, the statement "an in-depth audit of each department in the banking institution might reasonably be conducted at least once a year" is not consistent with the risk-based practices that have been approved by OFAC and banking regulators as part of the FFIEC BSA/AML Examination Manual issued in June 2005.

Bank of America appreciates the opportunity to comment on OFAC's Interim Final Rule. If you have any questions regarding our comments, please contact David H. Miller, Associate General Counsel, at (213) 229-1150.

Very truly yours,

David H. Miller
Associate General Counsel

cc: Hank Grant
John Byrne
John Huffstutler

Missouri Bankers Association
207 E. Capitol Ave.
Jefferson City, MO 65102

March 13, 2006

Assistant Director of Records
Attn: Request for Comments (Enforcement Procedures)
Office of Foreign Asset Control
FR Doc Number 06-278
Department of Treasury
Sent via Agency FAX

RE: Interim Final Rule regarding Economic Sanctions Procedures

Dear Assistant Director of Records:

These comments are being submitted on behalf of almost 400 Missouri banks and savings and loan associations by the Missouri Bankers Association (MBA), a Missouri trade association. The MBA is responding to the proposal made by the Office of Foreign Asset Control (OFAC) requesting comments on OFAC's Interim Final Rule regarding Economic Sanctions Procedures against banks.

The MBA supports OFAC's Interim Final Rule for depository institutions, recognizing that each Missouri bank must review the OFAC Risk Matrices to and commitments by bank management to identify the risk level of business and take appropriate steps to contain it, however some type of commentary is appropriate for Missouri community banks that provides guidance to banks that don't normally do this business. Banks are subject to both civil and/or criminal penalties based on the overall weight of the evidence and the severity of the violations.

While the MBA supports OFAC's Interim Final Rule, it has some concerns about its application. The final rule has no quantitative guidance, this means no efforts have been made to quantify the transaction risk, though the rule states the review will be over a period of time with input from the bank's federal bank regulator(s). The MBA's members are concerned that if one banking transaction, in 50 international banking transactions for the year, does not meet the OFAC's compliance, the bank must demonstrate its qualifying OFAC procedures in detail. This could be characterized as the equivalent of state laws making a dog rabid and subject to death (the one bite rule). Our members needs a safe harbor that recognizes community banks don't have the resources anticipated in this much better rule.

In addition, there are no hold harmless provisions in the Interim Final Rule. With the increased emphasis on the treatment of information in bank records as confidential and

ongoing litigation on disclosure of such records even when it appears such records are clearly within the scope of the exemption, this rule should broadly state that banks "Voluntary disclosure" of information under this rule is protected, even if such disclosure is later found to be unnecessary or excessive.

Thank you for the opportunity to comment on the above notice of inquiry. If I can be of additional assistance, please let me know.

Sincerely,

/Signed

Max Cook, President

-----Original Message-----
From: iplanet user [mailto:webuser@web2.treas.gov]
Sent: Thursday, March 09, 2006 6:47 PM
Subject: Text Format Comment on 31 CFR Part 501

Name: Sheri Ledbetter
Address: 924 Overland Court

City: San Dimas
State: CA
Zip: 91773-1750
Workphone: 909-394-6472
Email: sledbetter@wescorp.org
Regualtion Number: 501
Comments: Western Corporate Federal Credit Union (WesCorp) appreciates the opportunity to comment on The Department of the Treasury's 31 CFR Part 501; Economic Sanctions Enforcement Procedures for Banking Institutions.

WesCorp is a corporate credit union - or credit union for credit unions - serving 1,060 credit unions nationwide. With assets of $25 billion, we are the largest of the nations' 29 corporate credit unions. WesCorp offers balance sheet and payment system solutions to our member credit unions. On average, WesCorp handles two OFAC rejected transactions per month.

WesCorp wholly supports the Department of Treasury's Interim Final Rule for banking institutions.

-----Original Message-----
From: iplanet user [mailto:webuser@webl.treaspub.iad.qwest.net]
Sent: Friday, March 03, 2006 12:10 PM
Subject: Text Format Comment on 31 CFR Part 501

Name: Roger Hirsch
Address: 5931 So. 58th, Ste G

City: Lincoln
State: NE
Zip: 68516
Workphone: 402-434-6080
Email: rwhirsch_bancook@alltel.net
Regualtion Number: 501
Comments: I represent four itty-bitty banks ranging in asset size of $7 million to $70 million, located in Nebraska and Kansas.

With regard to Matrix B "additional factors", I am only concerned with the commentary on testing. More specifically, the commentary suggests that an "in-depth audit of each department in the [bank] might reasonably be conducted at least once a year." While the language suggests that any testing be consistent with the bank's OFAC risk profile, I am concerned that an annual in-depth audit for OFAC purposes will become the norm in the future.

For low-risk banks such as mine, an in-depth annual audit of each department for OFAC purposes will amount to substantial overkill.

May I suggest that the "once a year" suggestion be dropped in favor of language favoring a "periodic in-depth audit", or that the annual, in-depth requirement be more specifically directed to banks that fall within the "Moderate" or "High" categories of risk.

Thank you for your consideration.

Securities Industry Association
1425 K Street, NW • Washington, DC 20005-3500 • (202) 216-2000, Fax (202) 216-2119 • www.sia.com, info@sia.com

March 14, 2006

Via E-mail

Barbara Hammerle
Acting Director
Office of Foreign Assets Control
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Second Floor, Annex Building
Washington, D.C. 20220

Re: Economic Sanctions Enforcement Procedures for Banking Institutions

Dear Ms. Hammerle:

The Securities Industry Association ("SIA")[1] appreciates this opportunity to comment on the proposed Economic Sanctions Enforcement Procedures for Banking Institutions ("Enforcement Procedures") issued by the Office of Foreign Assets Control ("OFAC").[2] At the outset, SIA applauds OFAC's efforts to make its enforcement process more transparent, and SIA views the publication of the proposed Enforcement Procedures as an indicator of enhanced OFAC openness with and outreach to the financial services industry. We are commenting to provide responses to your specific requests for comment from entities regulated by the Securities and Exchange Commission ("SEC") because you intend to issue separate enforcement procedures for these entities.

SIA suggests that to further government-industry cooperation, OFAC should make several changes to the proposed Enforcement Procedures. First, OFAC should provide enhanced transparency of the enforcement action decision-making process, as described below. Second, OFAC should clarify alternative resolutions to enforcement investigations that are available in situations that do not warrant the initiation of civil enforcement action. Third, OFAC should clarify those mitigating and aggravating factors that it will consider in determining whether to initiate enforcement actions and in assessing enforcement sanctions. Fourth, OFAC should make civil penalty decisions within 180 days of receiving a response from an alleged violator.

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1 The Securities Industry Association brings together the shared interests of approximately 600 securities firms to accomplish common goals. SIA's primary mission is to build and maintain public trust and confidence in the securities markets. SIA members (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the U.S. Bureau of Labor Statistics, the U.S. securities industry employs nearly 800,000 individuals, and its personnel manage the accounts of nearly 93 million investors directly and indirectly through corporate, thrift, and pension plans. In 2004, the industry generated $236.7 billion in domestic revenue and an estimated $340 billion in global revenues. (More information about the SIA is available on its home page: http://www.sia.com.)

2 These comments respond to the interim final rule at 71 Fed. Reg. 1971 (Jan. 12, 2006).

In addition, SIA recommends that OFAC provide further clarification regarding how the Enforcement Procedures will be applied to complex corporate structures, including how regulatory reporting should be handled, the collateral consequences to global firms for apparent violations of a particular affiliate, and how conflicts of laws issues will be dealt with.

Finally, we urge OFAC to provide safe harbor procedures – compliance program "best practices" – that, if followed, would afford a safe harbor against liability and also consider the unique characteristics of shared customer relationships within the securities industry and the complexities relating to OFAC reporting.

I. Suggested Enhancements to OFAC's Enforcement Procedures

A. Provide Enhanced Transparency of OFAC's Enforcement Decision Making Process

SIA applauds OFAC's efforts to increase the transparency of OFAC's procedures for enforcing sanctions programs pursuant to Presidential and Congressional mandates as well as to better inform the regulated community. However, SIA believes that it would be helpful for the regulated community to understand the chain of review and which departments are involved in the decision making process. SIA recommends that OFAC consider including in the Enforcement Procedures an enhanced description of the process undertaken within OFAC to determine to initiate an enforcement investigation, informally contact the banking institution regarding OFAC's preliminary assessment of the appropriate action, and provide written notification to a banking institution of OFAC's proposed action. It is a cumbersome process for the regulated community to attempt to contact OFAC during investigations without a clear understanding of the chain of review and which departments are involved in each step of the decision making process.

B. Clarify Alternative Resolutions to OFAC's Enforcement Investigations

SIA strongly agrees with OFAC's statement from its 2003 proposal that there are circumstances in which alternative resolutions "may achieve the same result as a monetary penalty insofar as future compliance with OFAC regulations is concerned." 68 Fed. Reg. at 4426. SIA believes that it would further the goal of providing enhanced transparency of OFAC's Enforcement Procedures to clarify the alternative resolutions to OFAC's enforcement investigations.

Given that these Enforcement Procedures supercede OFAC's prior rule proposal relating to Economic Sanctions Enforcement Guidelines (issued on January 29, 2003), SIA believes that it would be helpful for OFAC to clarify whether license suspension, cautionary letters and warning letters remain viable alternative resolutions to enforcement investigations under OFAC's Enforcement Procedures. Further, SIA urges OFAC to make clear in which types of situations these types of alternative resolutions may be used.

C. Provide Guidance on Mitigating and Aggravating Factors

SIA strongly supports the publication of mitigating and aggravating factors that will be evaluated in determining an appropriate sanction, as was provided in OFAC's 2003 rule proposal relating to Economic Sanctions Enforcement Guidelines. It is unclear whether OFAC's Enforcement Procedures incorporate a similar evaluation of mitigating and aggravating factors and what such factors might be. Although OFAC states that, under the revised procedures, prior to taking enforcement actions OFAC will "generally review apparent violations by a particular institutions over a period of time, rather than evaluating each apparent violation independently" and that it will "periodically evaluate a banking institution's apparent OFAC-related violations in the context of the institution's overall OFAC compliance program and specific OFAC compliance record", it does not indicate what factors will be considered in determining whether an action should be taken or the mitigating or aggravating factors that will be evaluated in order to determine an appropriate sanction.

D. Make Civil Penalty Decisions Within 180 Days of Receiving a Response from the Alleged Violator

SIA encourages OFAC to include in the Enforcement Procedures a statement that OFAC generally will make civil penalty decisions within 180 days after receiving a response from the alleged violator. As time passes, information that may be relevant to a settlement or appeal of a penalty decision may become difficult or impossible to obtain as memories fade and documents become dated. In addition, it is important for firms to secure closure on matters that are pending before OFAC.

It is prejudicial to the fact-finding mission, and to the interests of justice, if a decision is delayed longer than six months. Accordingly, SIA suggests that OFAC include in the Enforcement Procedures a statement indicating that, except in extraordinary cases, OFAC will make civil penalty decisions within 180 days after receiving a response from the alleged violator.

II. Considerations Relating to OFAC's Enforcement Process For Complex Corporate Structures

A. Explain How Regulatory Reporting Should Be Handled

A consistent theme of SIA's comments to regulators regarding the promulgation of rules and interpretive guidance relating to regulatory reporting obligations is to avoid requirements that are duplicative. As OFAC states in its interim final rule, OFAC's Enforcement Procedures apply to "banking institutions that may be part of a larger corporate structure, with a parent holding company."[3] Within such complex structures are affiliated entities that may have shared customer relationships or shared responsibility for transaction processing. In this regard, OFAC should provide clear guidance as to which entities have reporting obligations and work with the industry to streamline reporting requirements to make the reporting process efficient for the industry, but also to conserve regulatory resources by

[3] *See* 71 Fed. Reg. 1971, 1973 (Jan. 12, 2006).

limiting the possibility of reviews and investigations relating to duplicative and/or inconsistent filings.

B. Incorporate a Balanced and Measured Approach in Determining the Collateral Consequences to a Global Firm for Apparent Violations of a Single Affiliate

SIA urges OFAC to carefully consider, within the context of complex corporate structures, the collateral consequences of apparent violations by a single affiliate to the global firm. Depending upon whether the structure of the complex incorporates a centralized or decentralized process for OFAC reviews and reports, it may or may not be appropriate to consider, as part of the process for determining whether to initiate an enforcement action, the apparent violations by a single affiliate as indicative of weakness within the global firm's compliance program. SIA believes that a balanced and measured approach to reviewing a global firm's OFAC compliance program and record is necessary not only with respect to apparent violations of a single affiliate, but to determine whether the historical OFAC compliance record remains relevant to the adequacy of the global firm's compliance program given the passage of time, the potential for changes in ownership or control of the corporate structure resulting from mergers or acquisitions, or changes in applicable regulatory requirements.

C. Provide Guidance on Conflicts of Laws for Global Firms

As acknowledged by OFAC in the interim final rule release, complex corporate structures pose challenges for assessing compliance programs and making determinations about enforcement actions when there are apparent violations. In this regard, SIA believes that it would be helpful for OFAC to provide the industry with guidance relating to the following:

- How will conflicts of laws issues will be dealt with in making determinations regarding enforcement actions and imposition of sanctions?
- Will transactions that violate economic sanctions laws in foreign jurisdictions be considered in determining the adequacy of a global firm's OFAC compliance program?
- Will foreign regulatory assessments of the compliance program and internal controls to detect and deter violations of applicable economic sanctions laws of a global firm, or one of its affiliates, be considered by OFAC in assessing compliance programs and making determinations regarding enforcement actions?

III. Recommendations Relating to OFAC's Enforcement Procedures for the Securities Industry

A. OFAC Should Clarify "Best Practices" for OFAC Compliance Programs and Related Safe Harbors

SIA applauds OFAC's efforts to increase the transparency of OFAC's enforcement decisions. However, in order to avoid interaction with OFAC's enforcement mechanisms

in the first place, it would be helpful for OFAC to provide a set of compliance program "best practices," which, if followed, would afford a safe harbor against liability.

SIA previously has expressed concern regarding the potential liability that firms may face for genuinely innocent mistakes, and SIA has noted the need for a defense from sanctions where an institution has a compliance program and internal controls system in place to detect, identify, and report prohibited transactions, but where a technical violation nevertheless occurs.[4]

As we have pointed out previously, the creation of safe harbors from liability is consistent with the Treasury Department's previous implementation of regulations to deter and prevent violations of economic sanctions laws. In particular, SIA directs OFAC to the regulatory safe harbor created as part of the Treasury Department's implementation of sections 313 and 319 of the USA PATRIOT Act.[5] These statutory sections prohibit certain financial institutions from maintaining "correspondent accounts" with foreign "shell banks" and also require financial institutions to collect information regarding all of the correspondent accounts maintained for foreign banks. Recognizing the difficulty of determining whether a foreign bank is a "shell bank" and the burdens entailed in obtaining information from large numbers of foreign banks, Treasury appropriately provided a safe harbor for financial institutions that obtain prescribed certifications from their foreign correspondent banks.

SIA encourages OFAC similarly to reduce the business and regulatory risks associated with complying with OFAC's complex set of economic sanctions programs. OFAC can accomplish this by creating a safe harbor that would apply to firms that choose to follow compliance "best practices" as defined by OFAC.

B. Modify Concept of "Voluntary Disclosure" to Account for Shared Customer Relationships

OFAC's Enforcement Procedures provide that a voluntary disclosure of a violation will be considered by OFAC in its enforcement decisions. SIA applauds OFAC for incorporating this factor into its enforcement action decision making process; however, we believe that the Enforcement Procedures define "voluntary disclosure" too narrowly.

In particular, OFAC's Enforcement Procedures state that a disclosure is not voluntary if another party is "required to file a report concerning the same transaction" whether or not that other party actually files with report.[6] It is, in SIA's view, unreasonable to preclude the possibility of a "voluntary disclosure" merely because another business has an obligation to report an event to OFAC, regardless of whether it actually does file the required report. As we have previously discussed with OFAC, within the securities

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[4] *See* Letter from Alan E. Sorcher, Vice President and Associate General Counsel, to Larry D. Thompson, Chairman, Judicial Review Commission on Foreign Asset Control, at 5 (Nov. 16, 2000); *see also* Letter from Alan E. Sorcher, Vice President and Associate General Counsel, to Chief of Records, Office of Foreign Assets Control (Mar. 31, 2003).

[5] *See* 67 Fed. Reg. 60,562, 60,568-69 (Sept. 26, 2002) (codified at 31 C.F.R. 103.177(b)).

[6] *See* 71 Fed. Reg. 1971, 1973 (Jan. 12, 2006).

industry, there are far too many situations where entities share customer relationships and where reporting responsibilities may be concurrent to apply this definition of "voluntary disclosure." For example, in the context of an introducing and clearing broker-dealer relationship, a transaction by a shared customer would conceivably be the reporting obligation of both firms. Similar situations arise in the context of prime brokerage relationships and secondary trading of loans.

Not only does it seem unfair to insist that a "voluntary disclosure" cannot occur if there is a concurrent reporting obligation by another firm, but such a narrow definition also fails to encourage complete factual disclosures. OFAC presumably wants to create incentives for all firms with information about a potential violation to disclose that information to OFAC. The proposed limitation on the definition of "voluntary disclosure" does not create such incentives.

The standard for determining whether a disclosure is voluntary should be whether a person or business reports the violation within a reasonable time after first learning of the alleged violation (allowing the violator a reasonable period to investigate and confirm initial reports or suspicions). This standard is not only fair to industry participants but also advances OFAC's policy goals by creating appropriate incentives for full disclosures to OFAC by all persons concerned.

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SIA hopes that these comments help OFAC implement its statutory mandates in a manner that encourages industry cooperation and furthers U.S. foreign policy and national security objectives. If you wish to receive additional information related to our comments, please feel free to contact the undersigned.

Sincerely,

Alan E. Sorcher
Vice President and
Associate General Counsel
Securities Industry Association
(202) 216-2000

cc: Dennis Wood
Assistant Director
Office of Foreign Assets Control